

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

COUNTY OF VENTURA
APPELLANT,

v.

O. V. BLACKBURN
APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF FOR APPELLANT

FILED

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SEP 24 1965

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Courthouse
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INDEX

	<u>Page</u>
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE	2
SPECIFICATION OF ERRORS	6
QUESTIONS PRESENTED	6
SUMMARY OF ARGUMENT	7
I BLACKBURN'S MAP OF VENTURA COUNTY DOES NOT CONTAIN SUFFICIENT ORIGINAL AND CREATIVE WORK TO BE COPYRIGHTABLE UNDER THE LAW OF THE UNITED STATES.	8
II THE REPRODUCTION AND SALE OF COPIES OF THE MAP WITHOUT COPYRIGHT NOTICES DID NOT CONSTITUTE AN INFRINGEMENT OF THE COPYRIGHT BY THE COUNTY BECAUSE THE COUNTY WAS NOT OBLIGATED UNDER EITHER THE CONTRACT WITH BLACKBURN OR COPY- RIGHT LAW TO AFFIX COPYRIGHT NOTICES TO EACH COPY.	12
A. The Court Erroneously Assumed That the County Was Obligated to Affix the Copyright Notices Unless Black- burn Expressly Waived His Copyright or Unless There Was Very Strong Evidence That He Intended to Destroy It.	14
B. The Copyright Act Does Not Impose Upon the County the Duty or Obligation to Affix Copyright Notices to Each Copy of the Map Reproduced by the County.	16
C. The Agreement Between Blackburn and the County Under Which the County Reproduced Copies of the Map Does Not Impose Upon the County the Duty or Obligation to Affix a Notice of Blackburn's Copyright to Each Copy.	18

1.	The agreement is absolutely silent as to any duty or obligation to affix copyright notices to each copy of the map.	19
2.	A promise to affix copyright notices will not be implied against the County so as to make the County liable for damages for infringement of copyright.	21
III	THE DISTRICT COURT AWARDED EXCESSIVE DAMAGES BY FAILING TO PROPERLY DETERMINE THE AMOUNT OF THE DAMAGE WHICH WAS CAUSED BY THE FAILURE OF THE COUNTY TO AFFIX COPYRIGHT NOTICES.	26
A.	The Primary Cause of the Loss in Value of the Copyright Was the Fact that Blackburn on July 17, 1956, Sold to the County the Right to Reproduce and Sell Copies of the Map to the Public Without any Restrictions as to the Prices to be Charged, the Payment of Periodic Royalties, the Geographic Territory, or the Duration of the Rights.	29
B.	The Value of the Copyright was Greatly Decreased by the Fact that the Copies of the Map Sold by the County Under the Agreement of July 17, 1956, Were Current and Up to Date Whereas the Copies Sold by Blackburn Were Not Up to Date.	32
C.	The District Court Should Have Awarded the Statutory Damages in Lieu of Actual Damages Because There Was no Evidence of the Amount of Actual Damage Which Was Caused by Any Infringement of the County.	33
CONCLUSION		37
AGREEMENT BETWEEN BLACKBURN AND COUNTY		App. A
TABLE OF EXHIBITS		App. B

TABLE OF CITATIONS

PAGES

CASES

Amsterdam v. Triangle Publications, 189 F.2d 104 (3rd Cir. 1951)	7, 11
April Productions v. G. Schirmer, Inc., 308 N.Y. 366, 126 N.E. 2d 283 (N.Y.Ct.App. 1955)	24
Axelbank v. Rony, 277 F.2d 314 (9th Cir. 1960)	7, 10
Christianson v. West Pub. Co., 149 F.2d 202 (9th Cir. 1945)	10
Consumers Union of the United States v. Hobart Mfg. Co., 189 F. Supp. 275 (SDNY 1960)	26
Johnston v. 20th Century-Fox Film Corp., 82 Cal.App.2d 796, 187 P.2d 474 (1947)	23
Kirke La Shelle Co. v. Paul Armstrong Co., 263 N.Y. 79, 188 N.E. 163 (N.Y.Ct.App. 1933)	22
Manners v. Morosco, 252 U.S. 317, 40 S.Ct. 335, 64 L.Ed. 590 (1920)	22
National Comics Publications v. Fawcett Publications, 191 F.2d 594 (2nd Cir. 1951)	7, 15, 17, 19, 21, 25
Orgel v. Clark Boardman Co., Ltd., 301 F.2d 119 (2d Cir. 1962)	27
Public Affairs Associates, Inc., v. Rickover, 284 F.2d 262 (D.C. Cir. 1960)	16
Sheldon v. Metro-Goldwyn Pictures Corp., 309 U.S. 390, 60 S.Ct. 681, 84 L.Ed. 825 (1940)	27
Uproar Co. v. National Broadcasting Co., 81 F.2d 373 (1st Cir. 1936)	23

TABLE OF CITATIONS (Continued)

PAGES

STATUTES

17 U.S.C. 1	2, 29
17 U.S.C. 10	17
17 U.S.C. 101	2, 8, 26, 27

1 IN THE UNITED STATES COURT OF APPEALS
2 FOR THE NINTH CIRCUIT

3
4 No. 20275

5 COUNTY OF VENTURA, APPELLANT

6 v.

7 O. V. BLACKBURN, APPELLEE

8
9 ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
10 SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

11
12 BRIEF FOR APPELLANT

13
14 JURISDICTIONAL STATEMENT

15 This is an appeal from a final judgment entered on
16 May 17, 1965, by the United States District Court for the
17 Southern District of California, Central Division, awarding
18 O. V. Blackburn thirteen thousand one hundred dollars (\$13,100
19 damages from the County of Ventura for the infringement of a
20 copyright in a map (R. 168-169). The underlying action was
21 brought by O. V. Blackburn to recover damages and to obtain
22 an injunction for copyright infringement. The District Court
23 jurisdiction was invoked under 28 U.S.C. 1338 and 17 U.S.C.
24 101 (R. 2, 142, 160). The District Court held that O. V.
25 Blackburn had a copyright in the map under the laws of the
26 United States and that the County of Ventura had infringed
that copyright by failing to affix a notice of Blackburn's

1 copyright to copies of the map reproduced by the County under
2 an agreement with Blackburn (R. 164-165). Injunctive relief
3 was denied (R. 166). A final judgment awarding damages to
4 Blackburn was entered on May 17, 1965 (R. 168). The County
5 of Ventura on June 11, 1965, filed a timely notice of appeal
6 under 28 U.S.C. 2107 and 28 U.S.C. 1291 (R. 170). This
7 Court's jurisdiction accordingly rests upon 28 U.S.C. 1291.

8 STATEMENT OF THE CASE

9 This is a suit brought by O. V. Blackburn to obtain
10 an injunction and to recover damages for the infringement of
11 a copyright in a map under section 101 of the Copyright Act.
12 17 U.S.C. 101.

13 O. V. Blackburn at some time prior to 1954 compiled
14 and drafted a map of the southern part of the territory of
15 Ventura County, California. All of the information depicted
16 on the map was taken from public records and governmental
17 sources (R. 144-145). In 1954 Blackburn published copies of
18 the map with copyright notices affixed and thereby claimed
19 protection of the Copyright Act. 17 U.S.C. 1, et seq.

20 On July 17, 1956, Blackburn and the County of Ven-
21 tura entered into a written agreement under which Blackburn
22 sold to the County of Ventura for the sum of one thousand
23 nine hundred dollars (\$1,900) the right to reproduce copies
24 of the map for its own use and for sale to the public at any
25 price determined by the County (R. 5-6; P.Ex. 1; set out in
26 full in appendix of this brief). Blackburn reserved the right

1 to continue to reproduce the map himself for sale. The agree-
2 ment contained no provision for the payment of royalties of
3 any kind to Blackburn on sales by the County or for the affix-
4 ing of copyright notices on maps sold. The agreement was ne-
5 gotiated with Blackburn by the County Surveyor (R. 62; D.Ex.
6 B; R.Tr. 71) and was drafted by the office of the Ventura
7 County District Attorney (R. 143). All persons who partici-
8 pated in the actual negotiation of the agreement for the County
9 were deceased at the time of the trial (R.Tr. 71). The mat-
10 ter of copyright notices was not mentioned in either Black-
11 burn's letter of May 5, 1956, offering to sell to the County
12 the right to reproduce copies of the map (D.Ex. B; R. 62) or
13 the July 17, 1956, agreement (P.Ex. 1; R. 5-6; appendix of
14 brief) and was not discussed by Blackburn with the County un-
15 til after June 7, 1963 (R. 163). As a result of the July 17,
16 1956, agreement Blackburn furnished to the County photographi-
17 c negatives of the map from which linen tracings were prepared
18 by Reed and Company for the County (R. 143; R.Tr. 87-88; R.
19 163). Blackburn testified that the negatives provided to the
20 County for the preparation of the tracings did contain copy-
21 right notices (R.Tr. 18-44). The linen tracings obtained by
22 the County did not contain copyright notices (R. 145, 163).
23 Maps sold by the County were made from these tracings. Maps
24 sold by the County up to June 1964 did not contain copyright
25 notices (R. 143). Since that time, while maintaining that it
26 had no obligation to do so, the County has affixed a copyright

1 notice to each copy of the map reproduced by the County
2 (R. 143; R.Tr. 91, 98).

3 Blackburn testified that the map cost seven thousand
4 five hundred dollars (\$7,500) to prepare and that the value
5 of the copyright on the map prior to entering into the contract
6 with the County was fifteen thousand dollars (\$15,000) (R.Tr.
7 50). Blackburn's witness Renie testified that the value of
8 the map prior to the agreement with the County was from fifteen
9 thousand dollars (\$15,000) to twenty thousand dollars
10 (\$20,000) (R.Tr. 79-82). Both witnesses testified that at
11 the time of the trial the copyright had no value (R.Tr. 50,
12 82).

13 The copies of the map sold by the County contained
14 current information and were always within thirty days of
15 being up to date (R.Tr. 92-93; R. 144). The copies of the
16 map sold by Blackburn had not been up-dated since 1956 (R.Tr.
17 67-70). The County sold copies of the map for fifteen dollar
18 (\$15) while Blackburn sold them for seventy dollars (\$70)
19 (R.Tr. 66). Blackburn testified that before entering the contract
20 with the County his sales averaged one thousand five
21 hundred dollars (\$1,500) a year and thereafter decreased to
22 four hundred fifty dollars (\$450) to two hundred fifty dollar
23 (\$250) a year (R.Tr. 64). The County's sales during the statutory
24 period from October 1961 through June 1964 totaled
25 three thousand eight hundred eighty-eight dollars (\$3,888)
26 (R. 144). During this period the County sold ninety-six copies

1 of the complete map and one thousand nine hundred forty-eight
2 (1,948) copies of separate parts of the map representing
3 another sixty-eight (68) complete maps (R. 144). The County'
4 sales increased by approximately fifty percent (50%) after
5 the copyright notices were affixed in June 1964 (R.Tr. 91).

6 At the commencement of trial before taking testimon
7 the court held as a matter of law that the map was copyright-
8 able since the information on the map was copied from three o
9 more sources (R.Tr. 8-9) and that since the subject matter of
10 the agreement granting the right to reproduce copies of the
11 map was a copyrighted instrument the County has an obligation
12 as a matter of law to affix a copyright notice unless Black-
13 burn clearly intended to destroy the copyright. (R.Tr. 12, 14)

14 The court further held that the only evidence in th
15 record as to the value of the copyright was the testimony
16 that the copyright was worth fifteen thousand dollars (\$15,00
17 before the July 17, 1956 agreement and was worth nothing at
18 the time of trial (R.Tr. 111-112), and that therefore damages
19 were fifteen thousand dollars (\$15,000) less the one thousand
20 nine hundred dollars (\$1,900) paid under the July 17, 1956
21 agreement.

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1 3. Whether one who has the unrestricted right to
2 reproduce, use and sell copies of a map without payment of
3 royalties to the claimant of a copyright is liable in damages
4 for the entire diminution in value of the copyright over a
5 period of years for failure to affix copyright notices to
6 copies of the map.

7 SUMMARY OF ARGUMENT

8 Blackburn's map is not copyrightable as a matter of
9 law merely because the information depicted on the map was
10 gathered from three or more sources and put together on one
11 piece of paper. Under Amsterdam v. Triangle Publications,
12 189 F.2d 104 (3rd Cir. 1951); Axelbank v. Rony, 277 F.2d 314
13 (9th Cir. 1960); and related cases a high degree of creativity
14 and originality on the part of the map maker is necessary to
15 secure a copyright on a map. Copying and compiling informa-
16 tion from various sources is not sufficient original and
17 creative work to make a map copyrightable.

18 The County is under no obligation to affix copyright
19 notices to every copy of the map reproduced by the County
20 under the agreement with Blackburn. In National Comics Pub-
21 lications v. Fawcett Publications, 191 F.2d 594 (2nd Cir.
22 1951), Judge Learned Hand says that if the copyright proprie-
23 tor does not exact a promise from the licensee to affix copy-
24 right notices to every copy reproduced by the licensee, the
25 licensee may publish copies as it chooses, either with or
26 without copyright notices affixed. The written contract is

1 the only agreement between Blackburn and the County and it
2 contains no mention whatsoever of copyright notices. The
3 Copyright Act does not place a mandatory duty on the County
4 to affix copyright notices. The law will not construct
5 against the County an implied promise to affix copyright no-
6 tices for the sole purpose of making the County an infringer
7 of copyright and liable to Blackburn for damages.

8 Even if the copyright on the map is valid and the
9 County is liable for infringement, the damages awarded were
10 excessive because they were not apportioned so that the Count
11 must pay only the amount of damages which was caused by the
12 absence of copyright notices. Under 17 U.S.C. 101 the in-
13 fringer is liable to pay the proprietor only such damages as
14 were suffered due to the infringement. The major cause of
15 the loss in the value of the copyright was Blackburn's sale t
16 the County of the right to reproduce and sell copies of the
17 map to the public at prices to be determined by the County.
18 The District Court did not properly determine the amount of
19 damages caused by the absence of the copyright notices.

20
21 I

22 BLACKBURN'S MAP OF VENTURA COUNTY DOES
23 NOT CONTAIN SUFFICIENT ORIGINAL AND
CREATIVE WORK TO BE COPYRIGHTABLE UNDER
THE LAW OF THE UNITED STATES.

24 At the outset of the trial, the District Court held
25 that the map compiled by Blackburn contained sufficient crea-
26 tivity to be copyrightable.

1 The Court had not looked at the map and the only
2 evidence on the issue of originality and creativity was con-
3 tained in the Pretrial Conference Order (R. 144-145) where
4 it was admitted that Blackburn had taken all of the informa-
5 tion and data depicted on his map from government maps, the
6 County Assessor's records, aerial photographs, U.S. Govern-
7 ment topographical maps and other sources. There was no evi-
8 dence of any effort or creativity by Blackburn in making his
9 map other than copying from these sources.

10 In answer to the County's suggestion that the ques-
11 tion was what if anything did Blackburn do to create a copy-
12 rightable map in addition to merely extracting information
13 from public records, other governmental sources and copying
14 other maps, the District Court stated:

15 "I do not mean to be abrupt with you,
16 counsel, but I don't agree with you at
17 all. I think every lawyer who has had
18 any experience at all, or anybody who
19 tries to find the city boundary of . . .
20 Oak View, you can go to the geological
21 survey of the United States, which is
22 now in Denver, and you can go to the
23 county recorder's office and the city
24 recorder's office and you will probably
25 go back to the old land office maps .
26 . . in Sacramento -- so in order to be
able to get the proper boundaries of
Oak View in relation to some public prop-
erty you would have to go to Denver, to
Sacramento and to Ventura today. So I
will hold that it is creativity for
somebody to put all that information to-
gether on one piece of paper. So that
disposes of that law issue." (R.Tr. 8-9.)

 Apparently the Court held that in order to extract

1 the necessary information from public records and other gov-
2 ernmental sources it would be necessary for Blackburn to go
3 to Denver, Sacramento and Ventura and that going to these
4 three sources of information and putting "all that informatio
5 together on one piece of paper" was sufficient creativity to
6 make the map copyrightable.

7 It should be noted that there is no evidence in the
8 record that Blackburn actually went to the three sources men-
9 tioned by the Court.

10 The Court's conclusion of law based on the assump-
11 tion of the three sources is not supported by the cases.

12 As this Court stated in Axelbank v. Rony, 277 F.2d
13 314, 318 (9th Cir. 1960):

14 "[I]t is well settled that maps as such are
15 entitled to limited copyright protection .
16 . . . We are unable to say as a matter of
17 law that the appellant's [map] involved
18 such a high degree of creation that even
19 if copied by Rony it constituted an in-
20 fringement of appellant's copyright."
21 (Emphasis added.)

19 Under this principle it seems clear that copying from three o
20 more sources does not involve such a high degree of creation
21 as to make Blackburn's map copyrightable as a matter of law.

22 In Christianson v. West Pub. Co., 149 F.2d 202, 203
23 (9th Cir. 1945) this Court held that an outline map of the
24 United States with state boundaries is in the public domain
25 and is not copyrightable. All of the information depicted on
26 Blackburn's map is available to the public from other sources

1 (R. 145) and therefore is "in the public domain". All Black-
2 burn did was to assemble, prepare, collate and compile the
3 information from the public domain. Under the cases that is
4 not enough creative and original work to make the map copy-
5 rightable.

6 In Amsterdam v. Triangle Publications, 189 F.2d 104
7 106 (3rd Cir. 1951) the court held that the "necessary amount
8 of creative work to justify the copyright of plaintiff's map
9 had not been shown" although the plaintiff had complied with
10 the copyright statutes and had received a registration cer-
11 tificate. In that case the plaintiff had studied other maps
12 and spent considerable time and effort to assemble and prepar
13 the information for publication, but the "actual original wor
14 of surveying, calculating and investigating" done by plaintiff
15 was so negligible that it was discounted entirely. There is
16 no evidence that Blackburn did even as much actual original
17 work as Amsterdam.

18 The District Court's conclusion that Blackburn's
19 map contains sufficient original and creative work to be
20 copyrightable under the laws of the United States (R. 164)
21 is clearly contrary to the law. Merely copying from three or
22 more sources and compiling the information together on one
23 piece of paper is not sufficient originality and creativity
24 to make a map copyrightable as a matter of law.

25 //////////////

26 //////////////

THE REPRODUCTION AND SALE OF COPIES OF THE MAP WITHOUT COPYRIGHT NOTICES DID NOT CONSTITUTE AN INFRINGEMENT OF THE COPYRIGHT BY THE COUNTY BECAUSE THE COUNTY WAS NOT OBLIGATED UNDER EITHER THE CONTRACT WITH BLACKBURN OR COPYRIGHT LAW TO AFFIX COPYRIGHT NOTICES TO EACH COPY.

At the commencement of the trial and prior to the taking of testimony the District Court held as a matter of law that the County was obligated to put Blackburn's copyright notice on every copy of the map reproduced by the County under the contract with Blackburn. The Court stated "as long as the subject matter of the contract is a copyrighted map" and the County has the right to reproduce, it also has the obligation to put on the copyright notice (R.Tr. 12, 14). From this the Court concluded that the County had a positive duty under the contract and under section 10 of the Copyright Act to affix notices, that the County was bound by an implied covenant within the contract to affix copyright notices and that the breach of the implied covenants constituted an infringement of copyright so as to make the County liable for damages (R. 165).

The contract contains absolutely no mention of copyright notices, the only reference to copyright is contained in the statement that Blackburn is the proprietor of a map titled "Blackburn's Map of Ventura County, copyrighted compiled and published by O. V. Blackburn." Blackburn had never mentioned or discussed copyright notices with the County.

1 until seven years after the contract was made (R. 163).

2 The July 17, 1956, agreement gave the County of
3 Ventura the unrestricted right to reproduce copies of the map
4 for its own use and for sale to the public. In this regard
5 three important factors deserve consideration. First, there
6 was no restriction on the price which the County could charge.
7 This is important because the failure of Blackburn to place
8 any control on the County's sales price permitted the situa-
9 tion to arise whereby the County could and in fact did under-
10 sell Blackburn by a wide margin, fifteen dollars (\$15) to
11 seventy dollars (\$70) (R.Tr. 66). Second, there were no re-
12 strictions as to the sales area, the persons to whom the map
13 could be sold or the period of time during which the County
14 could reproduce and sell copies of the map. Thus Blackburn
15 reserved no specific territory, customers or period of time
16 for his own sales. Last and very significant, Blackburn made
17 no provision for payment of royalties on the maps sold by the
18 County. This factor is crucial because since Blackburn was
19 not entitled to royalties from the County for maps sold, the
20 failure to affix copyright notices did not have the usual ef-
21 fect of depriving Blackburn of that natural source of income.
22 This feature distinguishes this case from the cases in which
23 a promise to affix the notice may be implied by the courts.

24 Taking all factors together, Blackburn's sale of the
25 unrestricted rights of reproduction, use and sale of copies
26 of his map, reserving only the right to make his own copies

1 for sale seems to constitute an absolute abandonment of any
2 copyright he might have had. This conclusion is especially
3 compelling considering that he made no effort to update his
4 own map since the sale to the County.

5 The District Court's conclusion that the County was
6 obligated to affix copyright notices because the subject mat-
7 ter of the contract was a map in which Blackburn claimed a
8 copyright and the implying of a promise to affix copyright no-
9 tices to maps sold by the County are clearly contrary to the
10 law.

11 A. The Court Erroneously Assumed That the County Was Obligated
12 to Affix the Copyright Notices Unless Blackburn Expressly
13 Waived His Copyright or Unless There Was Very Strong
14 Evidence That He Intended to Destroy It.

15 The District Court failed to distinguish between the
16 concept of forfeiture of a copyright and the concept of
17 abandonment or waiver of a copyright. The Court stated:

18 "If he sold you the right to print the
19 map and sell it without a copyright then
20 didn't he destroy his copyright?
21 Well, I think that would be a harsh re-
sult, and certainly it would to me take
very strong evidence to show that he
intended to do that.

22 " I think it comes down to
23 a question of whether or not the plaintiff
24 here waived his right to the copyright by
deliberately and purposely giving them
25 photostatic negatives for the purpose of
reproduction without having the copyright
notice on them." (Emphasis added. R.Tr.
15, 16.)

26 ///////////////

1 While there was "very strong evidence" in the con-
2 tract with the County that Blackburn intended to destroy the
3 value of his copyright if not the copyright itself, the Court
4 refused even to consider that the copyright could be lost un-
5 intentionally through Blackburn's inadvertence or neglect.
6 Although one of the conclusions of law states that Blackburn
7 has not forfeited his copyright (R. 165), the District Court
8 erroneously assumed that the copyright could be lost only if
9 Blackburn intended to destroy it.

10 The forfeiture of a copyright does not require any
11 evidence of a deliberate, purposeful or intentional surrender
12 or waiver of the copyright by the copyright proprietor. In
13 National Comics Publications v. Fawcett Publications, 191 F.2d
14 594, 598 (2d Cir. 1951), Judge Learned Hand explained the dif-
15 ference between the concepts in the following language:

16 "It is of course true that the publication
17 of a copyrightable 'work' puts that 'work'
18 into the public domain except so far as it
19 may be protected by copyright. That has
20 been unquestioned law since 1774; and
21 courts have often spoken of it as a
22 'dedication' by its 'author or proprietor.'
23 That, however, is a misnomer, for 'dedi-
24 cation,' like 'abandonment,' presupposes
25 an intentional surrender, which is in no
26 sense necessary to the 'forfeiture' of a
copyright. An author whose work is 'for-
feited,' need have had no such purpose,
and ordinarily does not; it was indeed
long doubtful whether he did 'forfeit'
his rights by publication, and when it
was settled that he did, the result was
a consequence, imposed invitum upon him
because of his failure to comply with
the prescribed formalities." (Emphasis
added.)

1 In discussing whether Admiral Rickover had forfeited
2 his right to a copyright on certain speeches in Public Affairs
3 Associates, Inc., v. Rickover, 284 F.2d 262, 269 (D.C. Cir.
4 1960), the court said:

5 "The word 'forfeit' is adopted to avoid
6 'dedication' or 'abandonment' which seem
7 to suggest purposeful release to the
8 public." (n.)

9 The failure of the District Court to recognize the
0 concept of forfeiture led to the erroneous conclusion that
1 unless Blackburn had deliberately, purposely and intentionally
2 waived his copyright by an express waiver or by very strong
3 evidence that he intended to waive it, the County was obli-
4 gated to affix the copyright notices to copies of the map re-
5 produced by the County and failure to do so constituted an
6 infringement of the copyright. The District Court erred in
7 refusing to consider that the carelessness or negligence of
8 Blackburn in protecting his copyright could result in the for-
9 feiture of the copyright even though he did not intend to de-
0 stroy it.

1 B. The Copyright Act Does Not Impose Upon the County the
2 Duty or Obligation to Affix Copyright Notices to Each
3 Copy of the Map Reproduced by the County.

4 The District Court concluded that a positive duty
5 exists on the part of the County under the contract and "under
6 section 10 of the Copyright Act" to affix a notice of Black-
burn's copyright on each copy of the map reproduced by the

County (R. 165). The conclusion was apparently based upon Blackburn's argument that "the plain mandate of section 10 of the statute where it says, 'and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor'" required the County to affix copyright notices even though the contract was silent as to such requirement. (R.Tr. 15.)

This interpretation of section 10 of the Copyright Act is clearly erroneous. The section reads:

"Any person entitled thereto by this title may secure copyright for his work by publication thereof with the notice of copyright required by this title; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor" 17 U.S.C. 10.

It is apparent from reading this section that the affixing of notice to each copy is merely a condition to securing the copyright. It is not a "plain mandate" to the proprietor and all the world that such notice shall be affixed to each copy. If it were, the copyright proprietor could never dedicate or abandon his copyright because every copy would have to contain the copyright notice by the "plain mandate of section 10". Thus the section does not state a mandatory duty but merely states a required condition for securing a copyright.

The effect of section 10 was explained by Judge Hand in the National Comics case, supra, 191 F.2d 594, 600:

"The question is whether the absence or

1 the imperfection of the notices on these
2 'strips' 'forfeited' their copyrights,
3 when they were published in the 'syndi-
4 cated' newspapers. The answer depends
5 upon the terms of the contract of bor-
6 rowing. Section 10 provides that the
7 first publication of a 'work' with the
8 'required' notice secures the copyright;
9 but it implies that a failure to affix
10 the notice upon each copy, later pub-
11 lished 'by authority of the copyright
12 proprietor,' will 'forfeit' it; and such
13 is the law."

14 Thus whether the County is required to affix copyright notices
15 depends upon the terms of the contract with Blackburn. A
16 mandatory duty to affix notices is not imposed by section 10
17 of the Copyright Act. Therefore, the District Court's con-
18 clusion that a positive duty exists on the part of the County
19 under section 10 of the Copyright Act to affix a notice of
20 Blackburn's copyright to each copy of the map reproduced by
21 the County is clearly contrary to the law.

22 C. The Agreement Between Blackburn and the County Under Which
23 the County Reproduced Copies of the Map Does Not Impose
24 Upon the County the Duty or Obligation to Affix a Notice
25 of Blackburn's Copyright to Each Copy.

26 The only mention of copyright in the agreement be-
tween Blackburn and the County is contained in the first
paragraph where it states:

"Whereas, O. V. Blackburn is the pro-
priator of a certain map of Ventura County,
California, titled 'Blackburn's Map of
Ventura County, copyrighted, compiled and
published by O. V. Blackburn'. . ." (R. 5; P.Ex. 1.)

The written contract is a valid, legal and binding contract

and is the only and entire agreement between Blackburn and the County (R. 143). The contract states that Blackburn is the proprietor of a map; it does not state that he is the proprietor of a copyright.

The contract contains no provision for the payment of periodic royalties to Blackburn. The County's rights are unrestricted as to the prices to be charged, the geographic area, the duration of time and the persons to whom the County may sell. Thus, it is not the usual copyright license. But even if it were, the County is not obligated to affix copyright notices.

1. The agreement is absolutely silent as to any duty or obligation to affix copyright notices to each copy of the map.

The law with respect to the duty or obligation of a copyright licensee to affix copyright notices is clearly stated in the National Comics case, supra, 191 F.2d 594, 600-601:

"If [the copyright proprietor] . . . gave [the licensee] . . . an unconditional license to publish the 'strips,' their publication without the 'required' notice was 'by authority of the copyright proprietor,' and had the same effect upon the copyrights that similar publication by [the copyright proprietor] . . . would have had: it 'forfeited' them unless § 21 saved them. On the other hand if [the licensee] . . . promised to affix the 'required' notice upon the borrowed 'strips' -- as it did upon the 'strips' made under the contract -- the performance of that contract was a condition upon the license

1 "[I]f [the copyright proprietor]
2 . . . exacted a promise from [the li-
3 cence] . . . to affix the notice upon
4 all copies which the newspaper published,
5 performance of that promise became a con-
6 dition upon that [the licensee's] . . .
7 license to publish But, if [the
8 copyright proprietor] . . . did not exact
9 any such promise from the [licensee] .
10 . . . to which it sent a 'mat,' it gave
11 'authority' to the [licensee] . . . to
12 publish as it chose, and the copyright
13 was 'forfeited,' if the [licensee] . . .
14 failed to annex the 'required' notice."
15 (Emphasis added.)

16 Since Blackburn did not exact a promise from the
17 County to affix the copyright notice to each copy he gave the
18 County authority to publish as it chose, either with or with-
19 out copyright notices affixed. The failure to affix copyright
20 notices therefore was not an infringement of the copyright.
21 Whether the copyright was forfeited by Blackburn's failure to
22 exact such a promise from the County depends upon whether sec-
23 tion 21 of the Copyright Act is applicable to this situation.
24 Holding that the failure of the County to affix notices does
25 not constitute infringement of a copyright does not necessarily
26 lead to the result that Blackburn's copyright has been for-
feited.

27 The burden is upon the proprietor of the copyright
28 to secure and protect his rights. If through neglect, inad-
29 vertence or design he fails to protect his rights and does
30 not exact a promise from the licensee to affix his copyright
31 notice to all copies made by the licensee, the licensee is not
32 liable for damages for copyright infringement. There is no

1 evidence that Blackburn ever attempted to exact a promise
2 from the County to affix notices. He never even mentioned
3 copyright notices until seven years later. The County there-
4 fore is not liable for damages for infringement for failing
5 to affix copyright notices.

- 6 2. A promise to affix copyright notices will not
7 be implied against the County so as to make the
8 County liable for damages for infringement of
9 copyright.

10 The District Court held that since the subject
11 matter of the contract between Blackburn and the County was
12 a copyrighted map, the County was bound by an implied cove-
13 nant to put the copyright notices on each copy of the map
14 reproduced by the County (R. 165; R.Tr. 12-13, 14).

15 In the National Comics case, supra, 191 F.2d
16 594, the District Court had held that the copyright owner
17 had "abandoned" the copyrights by negligent omissions of
18 copyright notices. The Circuit Court reversed the judgment
19 and remanded the case for a determination as to whether the
20 copyright owner had "forfeited" any of the copyrights by
21 failing to exact a promise to affix copyright notices from
22 the licensees or by failing to affix notices on the strips
23 the owner had published. The contracts with the licensees
24 were not before the Circuit Court so it could not determine
25 whether the contracts contained a promise to affix notices

26 //////////////

1 on the part of the licensees. However it was clear that the
2 subject matter of the contracts with the licensees was copy-
3 righted material. Therefore if the law implies a covenant to
4 affix copyright notices by the licensee where the subject
5 matter of the contract is copyrighted material, there would
6 have been no need to remand the National Comics case to
7 the District Court. Thus, the holding of the District Court
8 that the County is bound by an implied covenant to affix
9 copyright notices because the subject matter of the contract
10 between Blackburn and the County is a copyrighted map is
11 clearly erroneous.

12 The cases in which the courts have found an implied
13 covenant of good faith and fair dealing in a copyright li-
14 cense concerned literary material rather than maps. They
15 involved disputes as to which of the various rights protected
16 by a copyright were transferred in the license. In the
17 leading case of Manners v. Morosco, 252 U.S. 317, 40 S.Ct.
18 335, 64 L.Ed. 590 (1920), the dispute was whether the license
19 had transferred the motion picture rights in the play, "Peg
20 O' My Heart." It was held that the contract transferred the
21 stage play rights and did not include the movie rights. The
22 court implied a negative covenant of good faith and fair deal-
23 ing to prevent the copyright owner from selling the movie
24 rights to anyone else during the time that the licensee held
25 the rights to produce the stage play. Kirke La Shelle Co. v.
26 Paul Armstrong Co., 263 N.Y. 79, 188 N.E. 163 (N.Y.Ct.App.

1 1933), also involved the right to produce a stage play under
2 a license and the right to produce a motion picture. Since
3 the license contract was made before the invention of talking
4 pictures the court applied an implied covenant of good faith
5 and fair dealing to prevent the copyright owner from giving
6 the talking movie rights to another. In Uproar Co. v. Na-
7 tional Broadcasting Co., 81 F.2d 373 (1st Cir. 1936), a
8 covenant of good faith and fair dealing was implied to pre-
9 vent the author of radio scripts which had been prepared
10 under a contract with an advertiser from using them in a way
11 which would injure or interfere with the benefits to the ad-
12 vertiser under the contract.

13 Johnston v. 20th Century-Fox Film Corp., 82 Cal.
14 App.2d 796, 187 P.2d 474 (1947) was a dispute over an oral
15 agreement granting a film corporation the right to the ex-
16 clusive use of the title to a book, "Queen of the Flat Tops".
17 In answer to the film company's contention that the contract
18 was without consideration the court said the agreement
19 carried with it implied obligations upon the part of the
20 author to fully and adequately protect the film company's
21 use of the title. 82 Cal.App.2d 796, 819; 187 P.2d 474, 488.
22 Since the title had acquired a secondary meaning with a right
23 of protection not dependent upon copyright, the author was
24 not necessarily under an obligation to refrain from letting
25 the book fall into the public domain. The film company bar-
26 gained for the use of the title only and "cannot complain

1 because it did not get more."

2 April Productions v. G. Schirmer, Inc., 308 N.Y.
3 366, 126 N.E. 2d 283 (N.Y.Ct.App. 1955), involved a contract
4 between songwriters and a music publishing company. It was
5 stated that where the parties to the contract were two music
6 publishing houses who both "well knew no property or literary
7 right would survive without compliance" with the copyright law,
8 copyrighting by the publishing company was a necessarily im-
9 plied covenant of the agreement (126 N.E. 2d 288). The
0 covenant was not implied for the purpose of making the pub-
1 lishing company liable to the author for damages for infringe-
2 ment of the copyright.

3 In all of these implied covenant cases the copy-
4 right protected several other rights in addition to the right
5 to reproduce and sell copies of the copyrighted material to
6 the public. In none of them was a promise to affix copy-
7 right notices implied for the purpose of making a licensee
8 liable to the copyright proprietor for damages for infringe-
9 ment of the copyright.

0 The only reason for the court to construct a prom-
1 ise by the County to affix copyright notices is to make the
2 County liable for damages for infringement. The County has
3 not used and has not threatened to use any part of the copy-
4 right estate which was not granted to it in the agreement
5 with Blackburn. The County has not threatened to use any
6 movie rights, recording rights or any other rights protected

by a copyright. The County does not claim that it acquired the "right to destroy the copyright," if there is such a right in a "copyright." It is clear that the County did acquire the right to reproduce and sell copies of the map to the public at prices to be determined by the County. (R. 5; P.Ex. 1). The agreement contains no restrictions as to the prices to be charged, the geographic area covered, or the duration of the right of the County to reproduce and sell copies of the map. It does not restrict the right of the County to transfer or assign all or part of the rights granted to the County to other persons. To the extent that the rights granted to the County may be termed the "right to destroy the value of the copyright", the County clearly was granted that right in the agreement with Blackburn. But there can be no doubt that Blackburn intentionally granted these rights to the County. Blackburn's sale to the County in 1956 of the right to reproduce and sell copies of the map certainly was an abandonment of his exclusive rights under the copyright. He gave up his monopoly and himself effectively destroyed the value of the copyright. The 1956 agreement is clear evidence of his intentional, purposeful and deliberate abandonment of his exclusive rights under the copyright, if not of the copyright itself.

If the copyright was destroyed, it was destroyed by Blackburn's inadvertence, design or neglect. As is clear from the National Comics case, supra, 191 F.2d 594, the

"forfeiture" of the copyright is imposed upon him invitum because of his failure to exact a promise from the County to affix copyright notices to each copy of the map unless the omission was by accident or mistake and is excused by section 21 of the Copyright Act. The law does not construct an implied promise merely because one has failed to protect his rights.

III

THE DISTRICT COURT AWARDED EXCESSIVE DAMAGES BY FAILING TO PROPERLY DETERMINE THE AMOUNT OF THE DAMAGE WHICH WAS CAUSED BY THE FAILURE OF THE COUNTY TO AFFIX COPYRIGHT NOTICES.

In a copyright infringement action the owner of the copyright is entitled to recover "such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement." 17 U.S.C. 101. He is not entitled to recover damages for any loss, injury or harm which was not caused by the infringement or any profits of the infringer which were not made from the infringement. The plaintiff may not claim as an item of actual damages the injury to his business which would have resulted from the defendant's authorized use of the work. See Consumers Union of the United States v. Hobart Mfg. Co., 189 F.Supp. 275 (SDNY 1960). Thus in assessing the damages to be recovered for copyright infringement the court must apportion the items of loss and profit so that the copyright proprietor recovers only the

damages or the profits resulting from the infringement of the defendant. See Sheldon v. Metro-Goldwyn Pictures Corp., 309 U.S. 390, 60 S.Ct. 681, 84 L.Ed. 825 (1940) and Orgel v. Clark Boardman Co., Ltd., 301 F.2d 119 (2d Cir. 1962). In lieu of actual damages, the court may award "such damages as to the Court shall appear to be just" assessed at the rate of \$1 for every infringing copy but not to exceed five thousand dollars (\$5,000) nor be less than two hundred fifty dollars (\$250). 17 U.S.C. 101(b).

Blackburn in open court waived any claim to recovery of profits which may have been made by the County from any infringement (R. 164; R.Tr. 49). The issue of damages then became a choice between the actual damages suffered due to infringement or the statutory damages allowed in lieu of actual damages. The "infringement" found was the failure of the County to affix copyright notices to copies of the map reproduced by the County from July 1956 until June 1964 (R. 165, 160). The district judge recognized that Blackburn was entitled to recover damages only to the extent that they were caused by the failure of the County to affix the copyright notice during the statutory period (R.Tr. 109). The Court, however, awarded damages in the full amount of Blackburn's estimate of the market value of the copyright prior to the time of entering the contract with the County less only the amount which the County had already paid Blackburn under the contract (R. 164; R.Tr. 111). It is clear that the District

Court did not consider what the value of the copyright would have been at the time of trial but for the failure of the County to affix copyright notices during the statutory period. The Court failed to distinguish between the damage caused by the absence of copyright notices during the three years preceding the filing of the complaint and the loss to Blackburn from other causes.

In answer to the County's argument that Blackburn's damages from the absence of copyright notices were less than fifteen thousand dollars (\$15,000), the District Court stated:

"The difficulty, counsel, in all of these cases is that you can make a very plausible argument that there is no damages, but you have got to have evidence, and the only evidence I have here is that the copyright was worth \$15,000.

"However I will admit this, it was reduced by \$1,900 which he got for that.

"So the judgment should be for \$13,100, it should be reduced by the \$1,900.

"But the difficulty with your situation, as I say, counsel, is that it is very plausible to make that argument but I just don't have any evidence. I have found here that he was damaged and I have got to have something to hang my hat on insofar as evidence is concerned." (Emphasis added. R.Tr. 111-112.)

Thus, the District Court erroneously placed upon the County the burden of proving that the entire diminution in the value of the copyright was not caused by the failure of the County to affix copyright notices. But even if the

burden were on the County, the Court erroneously held that there was no evidence other than Blackburn's. There was sufficient evidence to establish that the entire loss of value was not caused by the absence of copyright notices from copies reproduced and sold by the County. The best and most reliable evidence of the value of the copyright is the amount which Blackburn accepted on July 17, 1956, for virtually all of the rights involved in the copyright of the map. As is shown by the above language from the transcript, the Court did not consider this evidence.

A. The Primary Cause of the Loss in Value of the Copyright Was the Fact that Blackburn on July 17, 1956, Sold to the County the Right to Reproduce and Sell Copies of the Map to the Public Without any Restrictions as to the Prices to be Charged, the Payment of Periodic Royalties, the Geographic Territory, or the Duration of the Rights.

The copyright in a map is nothing more than the exclusive right to print, reprint, publish, copy and vend the map. 17 U.S.C. 1(a). The "copyright" in a map does not include dramatic rights, performing rights, movie rights, recording rights and other rights normally involved in literary material. Thus any "copyright" which Blackburn had in the map was simply the exclusive right to reproduce and sell copies of the map. After selling the right to reproduce and sell copies of the map to the County on July 17, 1956,

1 Blackburn no longer had the exclusive rights. He no longer
2 had the monopoly granted him by the Copyright Act. He could
3 not thereafter convey to anyone else the exclusive right to
4 reproduce and sell copies of the map.

5 Whatever rights were left in Blackburn's "copyright"
6 after July 17, 1956, were clearly of much less value than the
7 rights which were involved in the copyright before July 17,
8 1956. The map is a map of Ventura County, the County is the
9 major market area for the map. The County was given the
0 right to reproduce and sell unlimited numbers of copies of
1 the map to the public at prices to be determined by the
2 County. The County was not required to make periodic royalty
3 payments to Blackburn. The County could have given away
4 copies of the map if it so desired. The County's rights were
5 not restricted to any geographic area or period of time. The
6 County was free to compete anywhere and anytime with Blackburn
7 or anyone else to whom he may have sold the right to repro-
8 duce and sell copies of the map.

9 All that Blackburn had left of the "copyright" after
0 July 17, 1956, was a non-exclusive right to reproduce and sell
1 copies of the map. He had only the "right" to compete with
2 the County for sales and that is all that he could have sold
3 to anyone else. The "exclusive" rights of the "copyright"
4 were split between Blackburn and the County after July 17,
5 1956. What Blackburn retained certainly was no more valuable
6 than what he had sold to the County for one thousand nine

1 hundred dollars (\$1,900). In view of the fact that the
2 County could and did reproduce and sell copies to the public
3 at a much lower price than Blackburn (R.Tr. 66), the rights
4 which Blackburn retained after July 17, 1956, were worth much
5 less than one thousand nine hundred dollars (\$1,900).

6 The value of the copyright clearly was greatly
7 diminished by the sale to the County of the right to reproduce
8 and sell copies to the public. Blackburn's opinion that the
9 copyright was "just as valuable" after the sale to the County
10 (R.Tr. 74-75) is pure nonsense. It simply does not hold up
11 under an analysis of the rights involved in the copyright of
12 a map.

13 Blackburn himself unwittingly stated the real cause
14 of the decrease in the value of the copyright when he said,

15 "I never developed any business because I
16 had no chance to because I couldn't compete
17 with the price they were selling it for . .
18 . . Previous to 1956 I was selling \$1,500
19 worth of maps a year. From then on it
20 dropped down from \$450 to \$250 a year be-
21 cause they could buy this big scale from
22 the County for less than I could sell the
23 reduced scale that I depended on." (Em-
24 phasis added. R.Tr. 64.)

25 He testified that the County sold copies of the map for fif-
26 teen dollars (\$15) whereas he sold them for seventy dollars
(\$70) (R.Tr. 66). When asked whether the value of the copy-
right was reduced by the sale of rights to the County, Black-
burn answered, "not if they hadn't undersold me." (R.Tr. 74.)
Blackburn recognized that the primary cause of his loss was

1 the competition of the County and not the failure of the
2 County to affix copyright notices. This is also shown by
3 the fact that the County's sales increased by fifty percent
4 (50%) after the copyright notices were affixed (R.Tr. 91).
5 The District Court however ignored the loss which was caused
6 by the contract with the County and in effect rewrote the
7 contract to give Blackburn the full amount of his estimate of
8 the market value of the copyright.

9 It is clear that the District Court in awarding
10 damages in the amount of thirteen thousand one hundred dollars
11 (\$13,100) did not consider the great reduction in value caused
12 by the contract with the County and did not apportion the
13 damages. The District Court therefore did not follow the law
14 and did not award only "such damages as the copyright pro-
15 prietor may have suffered due to the infringement."

16 B. The Value of the Copyright was Greatly Decreased by the
17 Fact that the Copies of the Map Sold by the County Under
18 the Agreement of July 17, 1956, Were Current and Up to
19 Date Whereas the Copies Sold by Blackburn Were Not Up to
20 Date.

21 At the time of the trial nearly nine years had
22 passed since Blackburn had sold the County the right to re-
23 produce and sell copies of the map to the public. The County
24 had corrected errors, added to, up-dated and kept current the
25 information depicted on the copies of the map reproduced and
26 sold by the County under the agreement with Blackburn (R. 144,

1 R.Tr. 92-93). Blackburn, however, did not keep the map cur-
2 rent and up to date (R.Tr. 67-70) so the copies reproduced
3 and sold by him did not contain current information.

4 The map involved covers the most populous area of
5 one of the fastest growing counties in California. As the
6 trial judge observed (R.Tr. 110) it is reasonable to assume
7 that copies of the map are not bought "for antiques to put
8 in a museum." The title insurance companies, public utilities
9 and service corporations to whom the County sold copies of
10 the map (R. 144) obviously were interested in buying copies
11 of a current and up-to-date map.

12 The District Court's conclusion that the work of
13 the County in correcting and up-dating the map has no bearing
14 on the issue of damages (R. 166) is clearly erroneous. In
15 assessing the damages "due to the infringement" the District
16 Court should have considered the diminution in the value of
17 the copyright which was caused by the fact that a current
18 and up-to-date version of the map was on the market in com-
19 petition with Blackburn's copies of the map. The District
20 Court did not properly ascertain the damages suffered by
21 Blackburn due to the failure of the County to affix copyright
22 notices.

23 C. The District Court Should Have Awarded the Statutory
24 Damages in Lieu of Actual Damages Because There Was
25 no Evidence of the Amount of Actual Damage Which Was
26 Caused by Any Infringement of the County.

1 Blackburn testified that his sales of copies of
2 the map dropped from one thousand five hundred dollars
3 (\$1,500) a year to four hundred fifty dollars (\$450) or two
4 hundred fifty dollars (\$250) a year (R.Tr. 64). This would
5 be an average loss of sales of one thousand one hundred fifty
6 dollars (\$1,150) a year or a total of nine thousand two hun-
7 dred dollars (\$9,200) from July 1956 until the County affixed
8 copyright notices in June 1964 and a total of three thousand
9 four hundred fifty dollars (\$3,450) for the three-year period
10 of the statute of limitations. But there is no evidence as
11 to what portion of the loss of sales was caused by the failure
12 of the County to affix copyright notices. There was no evi-
13 dence before the Court as to what Blackburn's loss of sales
14 would have been if the County had affixed copyright notices
15 to every copy. The County's sales increased by fifty percent
16 (50%) after the copyright notices were affixed (R.Tr. 91), so
17 it is obvious that the absence of copyright notices was not
18 the sole cause if any cause at all, of Blackburn's loss of
19 sales.

20 Blackburn testified that the market value of the
21 copyright went from fifteen thousand dollars (\$15,000) in
22 1956 to nothing at the time of the trial (R.Tr. 50). His
23 witness Renie testified that the value of the copyright in
24 1956 was fifteen thousand dollars (\$15,000) to twenty thousand
25 dollars (\$20,000) (R.Tr. 79) and that after the sale of the
26 rights to the County and the sale of copies by the County

1 without copyright notices the copyright had no value. But
2 neither Blackburn nor Renie testified as to what portion of
3 the loss in value was caused by the failure of the County to
4 affix copyright notices and what portion was caused by the
5 sale of the rights to the County and other factors.

6 The best evidence of the value of the copyright in
7 1956 is the fact that Blackburn in 1956 sold the right to
8 reproduce and sell copies to the public for one thousand nine
9 hundred dollars (\$1,900). If the copyright really was worth
10 fifteen thousand dollars (\$15,000) Blackburn surely would not
11 have sold what is in effect all of the protected rights for
12 only one thousand nine hundred dollars (\$1,900). But regard-
13 less of the amount of its market value there is no evidence
14 of what portion of the loss in value was caused by the
15 County's infringement.

16 The District Court apparently accepted as true
17 the testimony that the copyright had lost all of its value.
18 The Court held that Blackburn did not forfeit or waive his
19 copyright and in fact still holds it (R. 164-166). Blackburn
20 did not lose his copyright yet the Court awarded damages for
21 the full claimed value of the copyright prior to the agree-
22 ment of July 17, 1956, just as though the copyright had been
23 lost.

24 Blackburn testified that since July 1956 he sold
25 from four hundred fifty dollars (\$450) to two hundred fifty
26 dollars (\$250) worth of copies of the map a year. (R.Tr. 64).

1 At that rate he received approximately two thousand eight
2 hundred dollars (\$2,800) from sales of copies of the map up
3 to the time the County affixed copyright notices in June 1964.
4 The County's sales increased by fifty percent (50%) after the
5 copyright notices were affixed (R.Tr. 91) and Blackburn's
6 sales continued to decrease (R.Tr. 66-67). Blackburn still
7 has the copyright (R. 164-166; R.Tr. 109) and is able to
8 make future sales and recover from anyone who may infringe
9 his copyright. Thus the copyright clearly is not valueless
10 now and the absence of copyright notices from copies sold by
11 the County did not cause damage in the amount of thirteen
12 thousand one hundred dollars (\$13,100).

13 Since there was no proof of the amount of actual
14 damages caused by the absence of copyright notices, the
15 District Court should have awarded statutory in lieu damages
16 if any damages were to be awarded. There was evidence that
17 the County had sold 96 complete copies of the map and 1,948
18 separate parts representing approximately 68 more complete
19 copies of the map which did not contain the copyright notice
20 in the three years before the complaint was filed (R. 144).
21 There was sufficient basis for the Court to award damages at
22 the rate of one dollar (\$1) per infringing copy not to exceed
23 five thousand dollars (\$5,000) nor be less than two hundred
24 fifty dollars (\$250).

25 By failing to properly determine the amount of
26 damage caused by the failure of the County to affix copyright

1 notices during the statutory period, the District Court has
2 awarded excessive damages.

3 CONCLUSION

4 For the reasons stated, it is respectfully submitted
5 that the District Court's judgment should be reversed, and the
6 cause remanded with instructions to dismiss the complaint and
7 enter judgment granting appropriate relief to the County of
8 Ventura, or in the alternative, with instructions to enter
9 judgment granting Blackburn damages in an amount in the dis-
10 cretion of the trial court not to exceed five thousand dollars
11 (\$5,000) nor be less than two hundred fifty dollars (\$250), or
12 to grant other appropriate relief to which the County of
13 Ventura may be entitled.

14 WOODRUFF J. DEEM
15 District Attorney

16 HERBERT L. ASHBY
17 Assistant District Attorney

18 KARL H. BERTELSEN
19 Deputy District Attorney

20 County of Ventura
21 Courthouse
22 Ventura, California

23
24
25
26
September 1965.

1 AGREEMENT TO REPRODUCE MAP OF

2 VENTURA COUNTY

3 WHEREAS, O. V. BLACKBURN is the proprietor of a
4 certain map of Ventura County, California titled "Blackburn's
5 Map of Ventura County, copyrighted, compiled and published
6 by O. V. Blackburn", and

7 WHEREAS, it is the desire of the COUNTY OF VENTURA,
8 California to obtain a duplicate tracing of said map, together
9 with the right to reproduce said map for use by the County
10 Surveyor and for sale to the public,

11 NOW, THEREFORE, the COUNTY OF VENTURA, California,
12 hereafter called County, and O. V. BLACKBURN, 6400 West
13 Boulevard, Los Angeles, California, hereafter called Blackburn,
14 agree as follows:

15 1. Blackburn grants and sells to County the right
16 to obtain duplicate tracings on linen from the photographic
17 negatives of Blackburn's Map of Ventura County. County shall
18 bear the expense of making such duplicate tracings. Upon
19 completion said duplicate tracings shall be the property of
20 County.

21 2. Blackburn grants and sells to County the right
22 to reproduce from said duplicate tracings any and all maps
23 necessary for County use.

24 3. Blackburn grants and sells to County the right
25 to sell prints of said duplicate tracings to the public at
26 such prices as may be determined by County.

4. County agrees to pay Blackburn the sum of one thousand nine hundred dollars (\$1,900) as full consideration for the rights herein granted and sold.

5. Nothing contained in this agreement shall be deemed or construed to restrict the right of Blackburn to sell reproductions of Blackburn's Map of Ventura County to the public in Ventura County or elsewhere.

DATED this 17th day of July, 1956.

COUNTY OF VENTURA

By s/ L. A. PRICE
Chairman
Board of Supervisors, County
of Ventura, State of
California

ATTEST:

L. E. HALLOWELL, County Clerk
of the County of Ventura and
ex officio Clerk of the Board
of Supervisors thereof

By s/ SHIRLEY WEEKS
Deputy Clerk

s/ O. V. BLACKBURN
O. V. Blackburn

TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Copy (Record Page)</u>	<u>Identified (Transcript Page)</u>	<u>Received In Evidence (Transcript Page)</u>
Plaintiff's 1 (Contract)	5-6	17	17
Plaintiff's 2-A - 2-H (Photographic Nega- tives of the map)		18	23
Plaintiff's 2-A-1 - 2-H-8 (Duplicate tracings of the map)		39, 44	44
Plaintiff's 2-I (Index map)		40	42
Plaintiff's 3 (Certificate of Registration of Claim to Copyright)	74-75	51	51
Plaintiff's 4 (Printing order)	105	88	89
Plaintiff's 5 (Index map)		95	97
Defendant's B (Letter from Blackburn)	62	102	103
Defendant's C (Tracing of portion of the map)		100	101
Defendant's D (Blueprint of por- tion of the map)		100	101



1 C E R T I F I C A T I O N

2 I certify that, in connection with the preparation
3 of this brief, I have examined Rules 18 and 19 of the United
4 States Court of Appeals for the Ninth Circuit, and that, in
5 my opinion, the foregoing brief is in full compliance with
6 those rules.

7
8 Karl H. Bertelsen

9 KARL H. BERTELSEN
10 Deputy District Attorney
11 County of Ventura
12 State of California
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1 DECLARATION OF SERVICE BY MAIL

2

3 I, SOPHIA DeLESDErnIER, declare:

4 I am a citizen of the United States, over 18 years

5 of age, and not a party to the within cause; my business ad-

6 dress is 501 Poli Street, Ventura, California; I served three

7 copies of the attached brief for appellant on George R. Maury,

8 attorney for appellee, by placing same in an envelope ad-

9 dressed as follows:

10 George R. Maury
11 Suite 910
12 3440 Wilshire
13 Los Angeles, California.

14 Said envelope was then sealed and deposited in the

15 United States mail at Ventura, California, the county in which

16 I am employed, on September 23, 1965, with the postage

17 thereon fully prepaid;

18 I declare under penalty of perjury that the fore-

19 going is true and correct.

20 Executed at Ventura, California, on September 23,

21 1965.

22 Sophia DeLesdernier
23 SOPHIA DeLESDErnIER

24

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26

